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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,961	01/20/2004	Michel Doucet	11348-0010-999	3887
20583	7590	05/12/2005	EXAMINER	
JONES DAY			PRICE, CARL D	
222 EAST 41ST ST			ART UNIT	
NEW YORK, NY 10017			PAPER NUMBER	

3749

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,961

Applicant(s)

DOUCET ET AL.

Examiner

CARL D. PRICE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Arguments

Claims 1-31 have been cancelled.

Applicant's arguments with respect to newly submitted claims 32-39 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this regard, the examiner maintains the position that for the purpose of forming an aerosol container having gas barrier properties, it would have been obvious to a person having ordinary skill in the art to modify the container of JP 04-356617 to be made from a rigid amorphous acrylonitrile polymer material, in view of the teaching of JP 02-290270. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir.

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1992). In this regard, the prior art reference JP 02-290270 is in the same gas container field of applicant's endeavor and is reasonably pertinent to the particular problem with which the applicant was concerned. That is, forming an aerosol container having suitable gas barrier properties. JP 02-290270 is therefore appropriately relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 32-39: Rejected under 35 U.S.C. 103(a)

Claims 32-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over **JP 04-356617** (of record) in view of **JP 02-290270** (of record).

JP 04-356617 shows and discloses a gas cigarette lighter comprising:

- a fuel reservoir (1) made of a plastic material;
- the reservoir having a top wall (not referenced);
- a well (not referenced; generally at 3) having a bottom end (not referenced; adjacent 12), the well passing through the top wall;

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- a threaded ring (2);
 - o the threaded ring being disposed within the well;
- a gas dispensing device including at least one tubular element (5,7) having a bottom portion (adjacent 12), the tubular element being fitted into the threaded ring; and
- a microporous membrane (9-11) and retaining ring (12) supported within the tubular element by a crimped end (not referenced) of the tubular element,
 - o the membrane being received within the tubular element, wherein the bottom portion of the tubular element extends at least to the bottom end of the well;
- the bottom portion of the tubular element extends beyond the bottom end of the well (i.e. – in the same manner shown in applicant's figure 1);
- the threaded ring has a first opening (at 8) and a second opening (at 3), the tubular element passes through the first and second openings of the threaded ring;
- an annular sealing gasket (3) is disposed between the tubular element and the top wall;
- the top wall is provided with a radially extending rim (not referenced) against which the annular sealing gasket is held in abutment by the threaded ring;
- the tubular element is ring made of metal;
- the microporous membrane is held against an internal shoulder in the tubular element by being pressed against the retaining ring (12);
- the tubular element having a bottom end crimped against the retaining ring adjacent 12);
- the reservoir includes a bowl (i.e. – chamber) having a top end bonded to the top wall;
- the reservoir is formed of a plastic material.

JP 04-356617 shows and discloses the invention substantially as set forth in the claims with possible exception to the lighter tank being made from rigid amorphous polymer material selected from at least one of the group consisting of ABSs and SANs.

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JP 02-290270 teaches, from the same fuel tank field of endeavor as **JP 04-356617**, made forming an aerosol container having gas barrier properties from a rigid amorphous acrylonitrile polymer material.

In regard to claims 32-39, for the purpose of forming an aerosol container having gas barrier properties, it would have been obvious to a person having ordinary skill in the art to modify the container of **JP 04-356617** to be made from a rigid amorphous acrylonitrile polymer material, in view of the teaching of **JP 02-290270**. Also, in regard to claim 39, since the desired properties of the tank material would depend on numerous design concerns such as the type of fuel used, the size of the container, the relative sizes of each of the lighter components, etc., to form the container/tank of **JP 04-356617** from particularly ABS or SAN materials can be viewed as nothing more than a mere matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

Conclusion

See the attached PTO FORM 892 for prior art made of record and not relied upon and which are considered pertinent to applicant's disclosure.

THIS ACTION IS MADE FINAL

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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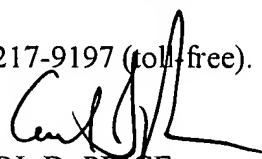
MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CARL D. PRICE
Primary Examiner
Art Unit 3749

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